

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	Case No. 8:07CR36
)	
Plaintiff,)	
)	
vs.)	
)	AMENDED ORDER
JOSEPH J. SMYRAK,)	
)	
Defendant.)	

This case came before the Court on an Amended Petition for Action on Conditions of Pretrial Release (#37). On December 13, 2007 Pretrial Services Officer Todd M. Beacom submitted a Petition for Action on Conditions of Pretrial Release alleging that Defendant had violated conditions of release as follows:

7. (N) Not possess or use a narcotic drug or other controlled substances defined in 21 U.S.C. § 802 unless prescribed by a licensed medical practitioner.

7. (O) Defendant shall submit to any method of testing at his/her expense as required by the officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and may include urine testing, the wearing of a sweat patch, blood tests, and/or a remote alcohol testing system. Defendant shall not obstruct or attempt to obstruct or tamper in any fashion with the efficiency and accuracy of any substance testing equipment, nor submit sample of body fluids which are not his/her own, nor otherwise adulterate any samples submitted for testing. All collections of fluids for testing shall be at the defendant's expense, payable at the time of collection.

A sweat patch illicit drug testing system was placed on the defendant on November 19 and removed on November 26, 2007 which tested positive for methamphetamine usage. A urine specimen was collected on November 29, 2007 and tested positive for methamphetamine usage in violation of condition 7(N).

The defendant was placed on the sweat patch illicit drug testing system on November 5, 2007 to assist in monitoring compliance with his bond conditions. On November 12, 2007 this patch was being removed for testing purposes. At this time, it was observed by the testing agency that the sweat patch had been tampered with in violation of condition 7(O).

Defendant appeared before the undersigned magistrate on December 14, 2007. Clarence Mock, Assistant Federal Public Defender, represented Defendant. Nancy Svoboda, Assistant United States Attorney, represented the Government. After being advised of the nature of the allegations, rights, and the consequences if the allegations were found to be true, Defendant admitted the allegations. The Court took judicial notice of the Memorandum of Pretrial Services Officer Todd M. Beacom dated December 13, 2007. The Court finds the allegations set out in the petition are generally true and finds the Defendant violated the conditions of release.

After providing both parties an opportunity for allocution as to disposition and considering the report of Pretrial Services, I find the Order Setting Conditions of Release (#7) should be modified.

IT IS ORDERED:

1. The Amended Petition for Action on Conditions of Pretrial Release (#37) is granted;
2. The February 20, 2007 Order Setting Conditions of Release (#7) is hereby modified.

Dated this 18th day of December 2007.

BY THE COURT:

s/ F. A. Gossett
United States Magistrate Judge